IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.956 OF 2006
IN
APPEAL FROM ORDER NO.710 OF 2006

Bloom Packaging Pvt.Ltd. and ors. ...Applicants
(Appellant in the Appeal)

vs.

The Municipal Corporation of
Greater Mumbai and ors. ...Respondents
(Respondents in the Appeal)

Mr.V.A.Thorat, Sr.Counsel a/w Shri Vaibhav Sugadare i/b
M/s.PDS Legal for the Applicants
Ms Geeta Jogalekar for Respondent-B.M.C.
Mr.A.K.Abhyankar,Sr.Counsel i/b Mr.A.V.Jain & Associates
for Respondent No.2

CORAM: A.S.OKA,J.
DATE : APRIL 30,2007.

P.C.:

1. Heard learned Counsel appearing for the parties. The Appeal is already admitted for final hearing. This is an application for interim relief in the Appeal.

2. The Appellants are the original Plaintiffs. The challenge in this Appeal from Order is to the Judgment and Order dated 29th August 2006 by which a Notice of Motion taken out by the Appellants-Applicants for temporary injunction has been dismissed. It will be necessary to refer to the prayers made in the Notice of Motion. The relief claimed in the Notice of Motion is for mandatory order and direction against the first Respondent to cancel and revoke the sanctioned building plan and cancel the IOD issued in favour of the second Respondent.

The second prayer is for injunction restraining the second Respondent from submitting any plan for sanction to the first Respondent-Municipal Corporation in respect of the property in question without express consent of the Appellant and the third prayer is for injunction restraining the second Respondent from carrying on any construction.

3. The Applicants/Appellantls are claiming to be the owners of apartments in the building ‘Kanta Niwas’. The second respondent is admittedly a co-owner of a bungalow previously known as ‘Rose Villa’ or ‘Chawla Centre’. The said bungalow was demolished by the second Respondent. The said bungalow was situated on the same plot on which the building ‘Kanta Niwas’ has been constructed. The bungalow was on the rear side of the building ‘Kanta Niwas’. The second Respondent obtained a building permission from the first Respondent and started construction of a new building in place of the old bungalow. Therefore, the Applicants/Appellants filed a suit.

4. Various submissions were made on merits of the Appeal. It was submitted that the second Respondent cannot erect a new building without the express consent of the Appellants. It was contended by the second Respondent that the Applicants have approached the Court belatedly after allowing the second Respondent to demolish the original structure. It was submitted that in place of the original structure, the second

Respondent desires to reconstruct the building. During the pendency of this Application, an effort was made to arrive at an amicable settlement. However, the parties could not succeed in arriving at an amicable settlement. It is pointed out by the second Respondent that the area of the proposed building will the same as the area of the original structure. It is set out in the Affidavit in reply that the second respondent wants to set up a cultural centre in the building proposed to be constructed. Different parts of the proposed building will be used for the purpose of library, exhibition hall, meditation room. There will be also an office of the second respondent. The submission of the second Respondent is that the building which is proposed to be constructed will be put to use for charitable purpose. It was pointed out that there are about 4,500 members of the second Respondent.

5. It was pointed out by the Applicants that in the plan submitted by the second Respondent to the first Respondent, the area proposed to be constructed is much more than the area of the original structure. It is pointed out that the plan was submitted without consent of the owners of the apartments in the adjourning building ‘Kanta Niwas’ on the same property. My attention has been invited to various clauses in the conveyance. It is submitted that the it is clear from the Affidavit of the second Respondent that about 4500 members of the said Respondent are likely to enter the property for

utilising the facilities in the building proposed to be constructed. An apprehension is expressed that the occupants of the building 'Kanta Niwas' will have to suffer nuisance as a result of visit by large number of members of the second Respondent.

6. On 25th April 2007, Shri Nemchand Jain the Director of the second Respondent has filed an Affidavit cum undertaking. He has stated that the construction of the new structure will be restricted to built up area of 2419 sq. ft. as per the revised plan has already submitted to the Municipal Corporation for approval. It is stated that the second Respondent will not consume any additional F.S.I. or will not load TDR on the constructed building till the hearing and final outcome of the suit. It is also stated that no equity will be claimed on the basis of the construction carried out during the pendency of the suit. It is stated that the access to the constructed structure will be from north side main gate for ingress and egress as provided in the second schedule to the conveyance dated 14th February 1976. There is a further Affidavit/undertaking filed in this Court by the same Director of the second Respondent. The said further Affidavit cum undertaking is dated 27th April 2007. In the said Affidavit it is stated that the second Respondent will not create any third party rights and will not part with possession of the constructed premises or land. An assurance has been given to

maintain the existing compound wall and fencing at all times. The second Respondent has also assured that its workers and and members will not trespass or encroach upon area occupied by the occupants of the building ‘Kanta Niwas’. An assurance is also given that the second Respondent will use the access to the constructed structure from the north side of the main gate for ingress and egress as provided in the black serrated portion marked in the plan annexed to the said Affidavit. An assurance is also given that the second Respondent will not cause any undue nuisance to the occupants of the building ‘Kanta Niwas’.

7. Prima facie, there is no dispute between the parties as regards the entitlement of the second Respondent to the original bungalow which was in existence and which was demolished few months prior to the institution of the present suit. Only after the demolition of the bungalow, the Applicants instituted the present suit. By that time, the building plan of the second Respondent was sanctioned. The second Respondent proposes to use the newly constructed building as a cultural centre. Admittedly, there is a separate access to the part of the plot where proposed construction is to be carried on. The access is separated from the rest of the plot on which the building Kanta Niwas is standing partly by a fencing and partly by a compound wall. A proposal has been submitted by the second Respondent to the

Municipal Corporation for modification of the sanctioned plan for the purpose of restricting the construction to 2419 sq.ft. of built up area. The main grievances of the Applicants are taken care of by the second Respondent by giving the various undertakings which are referred to above.

5. Considering the facts and circumstances of the case, the second respondent cannot be prevented from carrying on construction. However, the second respondent will have to be permitted to commence construction only after the revised plans are approved by the first Respondent-Corporation. The learned Counsel for the first Respondent-Corporation states that within a period of one month from today, the revised plans will be considered and if they are in order, approval can be granted to the same.

6. Hence, Civil Application is disposed of by passing the following order :

i) Undertakings of the second Respondent in the Affidavits dated 25th April 2007 and 27th April 2007 are hereby accepted.

ii) The first Respondent is directed to scrutinise and consider the revised plan submitted by the second Respondent within a period of one month from today. As

and when the revised plan permitting the construction to the extent of 2419 sq. ft. built up area is approved by the first Respondent, the second Respondent will be entitled to commence and carry out the construction.

iii) The construction will be subject to final outcome of the suit and the second Respondent will not be entitled to claim any equity on the basis of the construction carried out during the pendency of the suit.

iv) Pendency of the Appeal will not be treated as stay to the proceeding of the suit and the Trial Court will decide the suit as expeditiously as possible and in any event on or before 30th April 2008.

v) Civil Application is disposed of in above terms with no order as to costs.

JUDGE